10-CV-2173 (NGG)(LB)
AFFIDAVIT IN SUPPORT OF MOTION TO AMEND CPL § 440.10 MOTION INTO WRIT OF HABEAS CORPUS UNDER FEDERAL RULES OF CIVIL PRACTICE § 15(B)
RECEIVED APR 1 8 2012
PRO SE OFFICE

Dennis Colon, being duly sworn, deposes and hereby states:

- I am the Petitioner in the above-entitled proceeding. I make this affidavit in support of a motion pursuant to Federal Rules of Civil Practice § 15(b) to amend my CPL § 440.10 motion into my writ of habeas corpus.
- 2. I am presently an inmate at the Clinton Correctional Facility located in Dannemora, New York 12929.
- 3. Enclosed is Petitioner's CPL § 440.10 motion, Kings County Supreme Court denial of the motion, the application pursuant to CPL §§ 450.15 and

460.15 for a certificate of appeal to the CPL § 440.10 motion and the Appellate Division: Second Department's denial dated February 14, 2012.

WHEREFORE, I respectfully request that this Court enter an order 4. pursuant to Federal Rules of civil Practice § 15(b) amending my CPL § 440.10 motion into my writ of habeas corpus.

Sworn to before me this

Harry D. Durgan Notary Public, State of New York No. 01DU6008379

Qualified in Clinton County

Commission Expires

Dennis Colon, #06-A-4298 Clinton Correctional Facility P.O. Box 2001

Dannemora, New York 12929